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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/027,205	02/20/1998	CARL H. JUNE	GIN-005	2825

7590 05/14/2002

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EXAMINER

ROARK, JESSICA H

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 05/14/2002

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/027,205

Applicant(s)

JUNE ET AL.

Examiner

Jessica H. Roark

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 09 April 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 55, 60, 75 and 87-94.

Claim(s) withdrawn from consideration: _____

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8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5.

does NOT place the application in condition for allowance because:

1. The Dr. C. June Declaration under 37 CFR 1.132 filed 4/29/02 is insufficient to overcome the rejection of claims 1, 55 87-90, 92 and 94 under 35 USC 102(a) and claims 1, 55, 60, 75, 87-89, 92 and 94 under 35 USC 103(a) based upon Levine et al. (Science 272:1939-1942 1996, IDS #CH) as set forth in the previous Office Actions (Paper Nos. 16, 19 and 26). The June Declaration has not been found sufficient for several reasons.

Paragraph 2 of the Declaration indicates that Dr. June is the Inventor of the subject matter that appears to be that recited in the instant claims; therefore, the Declaration raises issues under 35 USC 102(f) as to who invented the subject matter now claimed since the instant inventorship further includes Richard C. Carroll, James L. Riley and Daniel C. St. Louis.

In addition, in view of the statement in paragraph 2 of the Declaration that Dr. June invented the subject matter that appears to be that recited in the instant claims, the statement in paragraph 4 does not address the contribution of all authors of the Levine et al. reference. Therefore, the reference is still "by others".

It is also noted that the Declaration provides only conclusory statements as to the role of the other authors of the Levine et al. reference without setting forth the basis for this opinion, such as what the role of the other co-authors were and why these roles do not contribute to conception of the instant invention. Neither does the Declaration provide a clear indication that the other authors were merely working under his direction, as per MPEP 715.01(c).

Finally, the Declaration was not timely filed in response to the rejections of record originally set forth in Paper No. 16.

For these reasons, the Declaration of Dr. C. June under 37 CFR 1.132 is not found to be sufficient to overcome the rejections of record with respect to Levine et al.

2. In addition, claims 1, 55, 60, 75, 87-89, 92 and 94 stand rejected under 35 USC 102(e) as anticipated by Chang (U.S. Pat. No. 6,129,916), and claims 1, 55, 60, 75, 91 and 93 stand rejected under 35 USC 103(a) as being unpatentable over Chang (U.S. Pat. No. 6,129,916) in view of the well-known and art-recognize use of avidin-biotin complexes to couple antibodies to solid phase surfaces, including tissue culture dishes, as evidenced by Shattil (U.S. Pat. No. 5,561,047), each for the reasons of record in Paper Nos. 19 and 26